IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHRISTINE DEENER, as Legal, Guardian and Next Friend of CORBIN TERRELL CARTER, COREY CARTER, CORTNEY LEE WALTON AND ALFRAIDO EMMANUEL, KEYS, minor children of Decedent, Angela Carroll,	)	
Plaintiff,	)	
v.	)	**NO. 03-2255 B/An**
KINDRED HEALTHCARE, INC., also d/b/a KINDRED NURSING CENTERS LIMITED PARTNERSHIP and SPRING GATE REHABILITATION AND HEALTHCARE CENTER,	)	
Defendants.	)	

ORDER DENYING DEFENDANT'S MOTION FOR *IN CAMERA* REVIEW OR PROTECTIVE ORDER

Before the Court is Defendants' Motion for *In Camera* Review or Protective Order filed on July 9, 2004. United States District Judge J. Daniel Breen referred the Motion to the Magistrate Judge for determination. For the following reasons, Defendants' Motion is **DENIED**.

BACKGROUND

This case involves the fatal shooting of a certified nurse's assistant by a third party in a long-term care facility. As part of discovery, Plaintiff requested that Defendants produce documents "specifically referenced in Defendant's Risk Management manual purportedly in

effect at the Spring Gate Rehabilitation and Healthcare Center facility where Angela Carroll was killed." (Pl's Resp. to Def's Mot. For *In Camera* Review or Protective Order). Defendant has objected to turning over or otherwise making these documents available to Plaintiff.

The Court notes three separate groups of documents that Defendant has objected to producing. First, Defendants object to the production of corporate compliance program's policies, procedures and training materials. Defendants state that Plaintiff's request for these documents is overly broad in scope and seeks documentation that is irrelevant. Second, Defendants object to the production of numerous documents prepared by its risk management team from January 1, 1999 through February 28, 2002. Defendants state that Plaintiff's request for these documents is overly broad in scope and seeks documentation that is irrelevant. Third, Defendants have refused to produce a specific document dated March 1, 2002, prepared by Defendant's Risk Management team (the "March 1, 2002 document"). Defendants argue this document is privileged because "it was prepared by a risk management professional in anticipation of litigation." (Def's Mot. For *In Camera* or Protective Order).

ANALYSIS

I. Protective Order

For good cause shown, Rule 26(c) of the Federal Rules of Civil Procedure authorizes a protective order to protect a party or person "from annoyance, embarrassment, oppression, or undue burden or expense" with regard to discovery. Fed. R. Civ. P. 26(c). The party seeking a protective order bears the burden of showing some good cause need for the order. *In re FirstEnergy Shareholder Derivative Litigation*, 219 F.R.D. 584, 587 (N.D. Ohio 2004). The United States Supreme Court has stated that the moving party should illustrate "a particular and

specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981).

Federal Rule of Civil Procedure Rule 26(b)(1) notes that "[p]arties may obtain discovery regarding any matter . . . if [it] appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). In this Circuit, the scope of discovery is extremely broad under the Federal Rules of Civil Procedure and "is . . . within the broad discretion of the trial court." *Lewis v. ACB Business Servs. Inc.*, 135 F.3d 389, 502 (6th Cir. 1998). Moreover, "once a party has requested discovery, the burden is on the party objecting to show that the discovery is *not relevant*." *Smith v. MCI Telecommunications, Inc.*, 137 F.R.D. 25, 27 (D. Kan. 1991) (emphasis added).

In this matter, Defendants have petitioned the Court to issue a protective order for documents contained within Defendants' corporate compliance programs policies, procedures, and training materials, and for documents prepared by Defendants' risk management team. In its Motion and Memorandum in Support of their Motion, Defendants have not shown the Court how turning over 164 pages of documents will somehow cause the Defendants "annoyance, embarrassment, oppression, or undue burden or expense." Furthermore, Plaintiff's case "questions the adequacy of the security measures in the facility at the time of the shooting." (Def.'s Mot. For *In Camera* Review or Protective Order). Following this Circuit's case law, training materials, corporate policies, and information on corporate risk management could reasonably lead to the discovery of admissible evidence. Thus, the Court finds the requested documents are potentially relevant, and Defendants' Motion for Protective Order is therefore **DENIED**.

II. *In Camera* Review

Defendants also ask the Court to perform an *in camera* review of the documents the Plaintiff sought in her Request for Production; however, Defendants are mistaken as to the purpose behind *in camera* review, as an *in camera* review should be performed by the court to determine the presence of a privilege. *See, e.g., United States v. Zolin*, 491 U.S. 554 (1989); *In re Grand Jury Supboena*, 31 F.3d 826 (9th Cir. 1994); *Royal Surplus Lines Ins. Co. v. Sofamor Danek Group, Inc.*, 190 F.R.D. 463, 486-87 (W.D. Tenn. 1998); *Diamond State Ins. Co. v. Rebel Oil Co., Inc.*, 157 F.R.D. 691 (D. Nev. 1994). The court should not spend its time weighing the relevancy of documents *in camera.* Therefore, as it relates to all documents other than the March 1, 2002 document, the Defendants' Motion for *In Camera* Review is **DENIED**.

Defendants state that the March 1, 2002 document is protected under the attorney client privilege, and Defendants request that the Court perform an *in camera* review of the document. A district court may perform an *in camera* review of a document in appropriate circumstances. *See Zolin*, 491 U.S. at 471-72. *In camera* review, however, is generally disfavored. *PHE, Inc. v. Department of Justice*, 983 F.2d 248, 252 (D.C. Cir. 1993). Furthermore, *in camera* review "should not be used as a substitute for a party's obligation to justify its withholding of documents." *Diamond State Ins. Co.*, 157 F.R.D. at 700. "[A] district court should not conduct an *in camera* review solely because a party begs it to do so." *Id.* at 700 n.3. The moving party must first submit to the district court sufficient evidence showing that a privilege exists and can be asserted, and after the moving party meets its burden, it is under the discretion of the district court whether to perform the *in camera* review. *Id.* (citing *Zolin*, 491 U.S. at 571).

In this matter, Defendants state the March 1, 2002 document was "prepared by a risk management professional in anticipation of litigation." (Def.'s Mot. For *In Camera* Review or Protective Order). Defendants have not proferred any additional information concerning this document. As such, the Court declines to perform an *in camera* review of the document at this time, and Defendants' Motion is **DENIED**. The Defendants may renew their request for *in camera* review at a later date if the Plaintiff seeks an order compelling production of this document.

Pursuant to the Order of Reference, any objections to this Order shall be made in writing within ten days after service of this Order and shall set forth with particularity those portions of the Order objected to and the reasons for those objections.

IT IS SO ORDERED.

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S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE

Date:_____